5

cf 2004

IN THE HIGH COURT OF JUDICATURE

AT BILASPUR (C.G.) Single Bench

SECOND APPEAL No. 131 **/2006**

APPELLANT : Kashiram, S/o. Dhanpat Chauhan
Plaintiff Aged about 65 years
R/o. Titurdih (Chauhan Ata Chakki)
Durg, Tahsil & Dist. Durg (C.G.)

VERSUS

RESPONDENTS :1. Vishwanath, S/o. Dhanpat Chauhan
defendants Aged about 78 years
R/o. Vill. Urdoli, Tah. Salimpur
Dist. Devariya (U.P.)
At present Near Sahid Bhagat
Singh Uchhatar Madhyamik School
Titurdih, Tahsil and District
Durg (C.G.)

2. Banarsi Lal, S/o.Dhanpat Chauhan
Aged about 63 years,
R/o. Near Sahid Bhagat Singh
School, Titurdih, Tahsil and
Dist. Durg (C.G.)

3. Shankar Prasad
S/o. Dhanpat Chauhan
Aged about 60 years
R/o. Near Sahid Bhagat Singh
School, Titurdih, Tahsil and
Dist. Durg (C.G.)

P.R. No. 657/06
Presented by Shri B. Vinayak
dated 23/3/06

SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE

(33)

HIGH COURT OF CHHATTISGARH, BILASPUR

SECOND APPEAL No.131/2006

Kashiram

Vs.

Vishwanath and others

Appearance :

Shri Hemant Solapurkar, counsel for the appellant.

ORAL ORDER

(22.6.2006)

SUNITL KUMAR SINHA, J.

Heard on admission.

(2) This is the plaintiff's Second Appeal, filed under Section 100 of the Code of Civil Procedure. The plaintiff lost in both the Courts.

(3) The brief facts are that the plaintiff filed a suit for declaration and permanent injunction. The plaint allegations are that the suit land, bearing Khasra No. 51/10, area 7 decimal and the house constructed over the same, are the properties of joint ownership and possession among the plaintiff and defendants, who are the real brothers. This land was purchased by the plaintiff on the name of defendant No.1, his elder brother, on 16.12.1974 through a registered sale-deed from one Kanti Bai Batliwal. The further allegations are that a house was jointly constructed over the said property out of the earnings of the plaintiff and defendant No.1. The plaintiff claims that the aforesaid transaction was a *Benami*

transaction and he is the actual owner of the land and both the brothers are the joint owners of the house, situated on it. The defendants denied the claims of the plaintiff and pleaded that in fact, defendant No.1 is the absolute owner of the property and he had purchased the aforesaid land from its owner namely- Kanti Bai out of his own earnings. He also pleaded that the house was also built by him.

(4) The learned trial Court dismissed the suit holding that it was not proved that the suit land was purchased by the plaintiff on the name of defendant No.1 and the suit house was built out of the earnings of the joint property among the 2 brothers. Thereafter, the plaintiff filed an appeal before the lower appellate Court. The lower appellant Court also took the similar view and dismissed his appeal, confirming the judgment and decree passed by the trial Court. It is against this judgment and decree, the plaintiff has filed this Second Appeal.

(5) Learned counsel for the appellant argues that the findings in relation to *Benami* transaction and also in relation to the funds for construction of the house over the suit land are not in accordance with law.

(6) I have gone through the records of the 2 Courts below and have also perused the evidence led by the parties.

(7) The trial Court, under reply to issue Nos. 1 and 2 has recorded its findings on the basis of positive evidence available on record. The trial Court has relied on the evidence of the plaintiff himself,

especially on para 18, in which he has admitted that all the brothers were living separately since the year 1954-55 and their mess were also separate. Further, the ancestral property in the village in Uttar Pradesh was also partitioned between them. In these circumstances, the trial Court held that there was no reason with the plaintiff to purchase the land on the name of defendant No.1. The trial Court also observed that there are variations in the pleadings and the Court statement of the plaintiff in relation to managing funds by the 2 brothers for construction of the house on the said land and on all these grounds, the above findings have been recorded.

(7) There is no perversity in the findings recorded by the 2 Courts below. I am not inclined to interfere with the concurrent findings recorded by the 2 Courts below in this regard. The appeal has no merit. The same is dismissed at the motion stage itself.

Sd/-
Sunil Kumar Sinha
Judge

sunita